

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **People of MI v Andrew Thompson**
Docket No. **260859**
L.C. No. **97-004114**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),
orders:

The motion to waive fees is GRANTED for this case only.

This case is DISMISSED for lack of jurisdiction because defendant cannot challenge the denial or dismissal of a successive motion for relief from judgment. See MCR 6.502(G)(1). Regardless of the title placed on the motion this last motion constituted a motion for relief from judgment. See MCR 6.501. This case does not satisfy the requirement of a retroactive change in the law. The Michigan Supreme Court has already ruled that *Blakely v Washington*, 542 US ; 124 S Ct 2531; 159 L Ed 2d 403 (2004) does not apply to indeterminate sentencing. See *People v Claypool*, 470 Mich 715 (2004). Furthermore, even if *Blakely* does apply to indeterminate sentencing, the United States Supreme Court ruled in *United States v Booker*, - US -; - S Ct -; - L Ed 2d - (2005(decided January 12, 2005, United States Supreme Court number 04-104) that guidelines are not unconstitutional if the following of the guidelines is discretionary. At the time the defendant was sentenced the judicially created guidelines applied and those guidelines were not required to be followed, as they did not have the force of law.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 17 2005

Date

Sandra Schultz Mengel
Chief Clerk